

HOUSE BILL 727

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

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FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PAIN MANAGEMENT; AMENDING THE PAIN RELIEF ACT;
PROVIDING RESPONSIBILITIES FOR THE NEW MEXICO MEDICAL BOARD AND
OTHER HEALTH PROFESSIONAL LICENSING BOARDS; ESTABLISHING
CRITERIA FOR CERTAIN ACTIONS; CREATING THE PAIN MANAGEMENT
ADVISORY COUNCIL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-2D-2 NMSA 1978 (being Laws 1999,
Chapter 126, Section 2) is amended to read:

"24-2D-2. DEFINITIONS.--As used in the Pain Relief Act:

A. "accepted guideline" means a care or practice
guideline for pain management developed by a national joint
commission on accreditation of health care organizations; the
American pain society; ~~[the]~~ an American ~~[geriatric]~~ geriatrics
society; the agency for health care ~~[policy, the]~~ research and

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1 quality; a national cancer pain [~~initiatives~~] initiative or any
2 other nationally recognized clinical or professional
3 association; or a [~~speciality~~] specialty society or government-
4 sponsored agency that has developed practice or care guidelines
5 based on original research or on review of existing research
6 and expert opinion whose guidelines have been accepted by the
7 New Mexico medical board [~~of medical examiners~~] and by other
8 boards of health care providers with prescriptive authority;

9 B. "board" means the licensing board of a health
10 care provider;

11 C. "clinical expert" means a person who by reason
12 of specialized education or substantial relevant experience in
13 pain management has knowledge regarding current standards,
14 practices and guidelines;

15 D. "disciplinary action" means [~~any~~] a formal
16 action taken by a board against a health care provider, upon a
17 finding of probable cause that the health care provider has
18 engaged in conduct that violates the [~~Medical Practice Act~~]
19 provider's respective board's practice act;

20 E. "health care provider" means a person licensed
21 or otherwise authorized by law to provide health care in the
22 ordinary course of business or practice of [~~his~~] the person's
23 profession and to have prescriptive authority within the limits
24 of [~~their~~] the person's license;

25 [~~F. "intractable pain" means a state of pain, even~~

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1 ~~if recurring, in which reasonable efforts to remove or remedy~~
2 ~~the cause of the pain have failed or have proven inadequate;~~
3 ~~and]~~

4 F. "pain" means a condition of bodily sensation of
5 serious physical discomfort that requires the services of a
6 health care provider to alleviate, including discomfort that is
7 persistent and chronic in duration; and

8 G. "therapeutic purpose" means the use of
9 pharmaceutical and non-pharmaceutical medical treatment that
10 conforms substantially to accepted guidelines for pain
11 management."

12 Section 2. Section 24-2D-3 NMSA 1978 (being Laws 1999,
13 Chapter 126, Section 3) is amended to read:

14 "24-2D-3. DISCIPLINARY ACTION--EVIDENTIARY
15 REQUIREMENTS.--

16 A. ~~[No]~~ A health care provider who prescribes,
17 dispenses or administers medical treatment for the purpose of
18 relieving ~~[intractable]~~ pain and who can demonstrate by
19 reference to an accepted guideline that ~~[his]~~ the provider's
20 practice substantially complies with that guideline and with
21 the standards of practice identified in Section ~~[4 of the Pain~~
22 ~~Relief Act]~~ 24-2D-4 NMSA 1978 shall not be ~~[subject to~~
23 ~~disciplinary]~~ disciplined pursuant to board action or criminal
24 prosecution, unless the showing of substantial compliance with
25 an accepted guideline by the health care provider is rebutted

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1 by clinical expert testimony. If no currently accepted
2 guidelines are available, then rules issued by the board may
3 serve the function of such guidelines for purposes of the Pain
4 Relief Act. The board rules [~~must~~] shall conform to the intent
5 of that act. Guidelines established primarily for purposes of
6 coverage, payment or reimbursement do not qualify as an
7 "accepted guideline" when offered to limit treatment options
8 otherwise covered within the Pain Relief Act.

9 B. In the event that a disciplinary action or
10 criminal prosecution is pursued, the board or prosecutor shall
11 produce clinical expert testimony supporting the finding or
12 charge of violation of disciplinary standards or other legal
13 requirements on the part of the health care provider. A
14 showing of substantial compliance with an accepted guideline
15 [~~can~~] shall only be rebutted by clinical expert testimony.

16 C. The provisions of this section [~~shall~~] apply to
17 health care providers in the treatment of [~~all patients for~~
18 ~~intractable~~] pain, regardless of [~~the patients'~~] a patient's
19 prior or current chemical dependency or addiction. [~~The~~] Each
20 board [~~may develop and issue~~] shall adopt rules establishing
21 standards and procedures for the application of the Pain Relief
22 Act, [~~to~~] including the care and treatment of chemically
23 dependent individuals.

24 D. In an action brought by a board against a health
25 care provider based on treatment of a patient for pain, the

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1 board shall consider the totality of the circumstances and
2 shall not use as the sole basis of the action:
3 (1) a patient's age;
4 (2) a patient's diagnosis;
5 (3) a patient's prognosis;
6 (4) a patient's history of drug abuse;
7 (5) the absence of consultation with a pain
8 specialist; or
9 (6) the quantity of medication prescribed or
10 dispensed."

11 Section 3. A new section of Chapter 24, Article 2D NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] PAIN MANAGEMENT ADVISORY COUNCIL CREATED--
14 DUTIES.--

15 A. The "pain management advisory council" is
16 created and shall be administratively attached to the
17 department of health. Members of the council shall be
18 appointed by the governor to consist of one representative each
19 from the New Mexico medical board, the board of nursing, the
20 board of pharmacy, the board of osteopathic medical examiners,
21 the board of acupuncture and oriental medicine, the university
22 of New Mexico health sciences center, a statewide medical
23 association, a statewide association of pharmacists, a
24 statewide association of nurse practitioners, a statewide
25 association of certified registered nurse anesthetists and a

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1 statewide association of osteopathic physicians; one person who
2 is a consumer health care advocate; and three persons who have
3 no direct ties or pecuniary interest in the health care fields.

4 B. The council shall meet at least quarterly to
5 review current pain management practices in New Mexico and
6 national pain management standards and educational efforts for
7 both consumers and professionals and shall recommend pain
8 management guidelines for each health care profession licensed
9 in New Mexico with prescriptive authority to its respective
10 board. Members who are not public employees shall receive per
11 diem and mileage as provided in the Per Diem and Mileage Act.
12 Public employee members shall receive mileage from their
13 respective employers for attendance at council meetings."

14 Section 4. A new section of Chapter 24, Article 2D NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] PAIN MANAGEMENT CONTINUING EDUCATION
17 REQUIRED.--A board shall encourage pain management continuing
18 education for all health care providers who have prescriptive
19 authority and who treat patients with pain."

20 Section 5. Section 61-6-5 NMSA 1978 (being Laws 1973,
21 Chapter 361, Section 2, as amended) is amended to read:

22 "61-6-5. DUTIES AND POWERS.--The board shall:

23 A. enforce and administer the provisions of the
24 Medical Practice Act, the Physician Assistant Act, the
25 Anesthesiologist Assistants Act and the Impaired Health Care

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1 Provider Act;

2 B. adopt, publish and file, in accordance with the
3 Uniform Licensing Act and the State Rules Act, all rules for
4 the implementation and enforcement of the provisions of the
5 Medical Practice Act, the Physician Assistant Act, the
6 Anesthesiologist Assistants Act and the Impaired Health Care
7 Provider Act;

8 C. adopt and use a seal;

9 D. administer oaths to all applicants, witnesses
10 and others appearing before the board, as appropriate;

11 E. take testimony on matters within the board's
12 jurisdiction;

13 F. keep an accurate record of all its meetings,
14 receipts and disbursements;

15 G. maintain records in which the name, address and
16 license number of all licensees shall be recorded, together
17 with a record of all license renewals, suspensions,
18 revocations, probations, stipulations, censures, reprimands and
19 fines;

20 H. grant, deny, review, suspend and revoke licenses
21 to practice medicine and censure, reprimand, fine and place on
22 probation and stipulation licensees and applicants in
23 accordance with the Uniform Licensing Act for any cause stated
24 in the Medical Practice Act and the Impaired Health Care
25 Provider Act;

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1 I. hire staff and administrators as necessary to
2 carry out the provisions of the Medical Practice Act;

3 J. have the authority to hire or contract with
4 investigators to investigate possible violations of the Medical
5 Practice Act;

6 K. have the authority to hire a competent attorney
7 to give advice and counsel in regard to any matter connected
8 with the duties of the board, to represent the board in any
9 legal proceedings and to aid in the enforcement of the laws in
10 relation to the medical profession and to fix the compensation
11 to be paid to such attorney; provided, however, that such
12 attorney shall be compensated from the funds of the board;

13 L. establish continuing medical education
14 requirements for licensed physicians and continuing education
15 requirements for physician assistants;

16 M. establish committees as it deems necessary for
17 carrying on its business; ~~and~~

18 N. hire or contract with a licensed physician to
19 serve as medical director and fulfill specified duties of the
20 secretary-treasurer; and

21 O. establish and maintain rules related to the
22 management of pain based on review of national standards for
23 pain management."